

Calendar No. 887

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-885

VICTOR L. ASHLEY

MAY 19, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 11060]

The Committee on the Judiciary, to which was referred the bill (H.R. 11060) for the relief of Victor L. Ashley, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 3, after the words "Victor L. Ashley", insert the following: "or, in the event of his death, to his estate".

PURPOSE OF AMENDMENT

This amendment would insure that any amounts payable to the claimant inure to his estate in the event of his death prior to final action of this bill.

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Victor L. Ashley of Green Cove Springs, Fla., of liability to the United States in the amount of \$2,717.76, representing an overpayment of compensation from January 27, 1957, through June 30, 1960, received by him while employed with the Florida group, Atlantic Reserve Fleet, Green Cove Springs, Fla. The bill would further authorize the repayment of any further amounts repaid or withheld by reason of the above liability.

STATEMENT

The Department of the Navy in its report to the committee on an earlier bill stated that it had no objection to enactment of the bill. The Comptroller General in his report on the same bill questioned legislative relief. In the current Congress, in a report on H.R. 11060, the Comptroller General advised the committee that partial relief had been extended to Mr. Ashley under the provisions of Public Law 90-616 and that the claim had been determined by the Comptroller General to merit relief under that law for that portion of the payment which occurred after July 1, 1960, the date fixed in the law.

The bill would make it possible to relieve Victor L. Ashley of liability to the United States which is based on the same facts and circumstances as were found by the Comptroller General to merit relief under the public law. The compensation in question was received by him while he was employed with the Florida group, Atlantic Reserve Fleet, Green Cove Springs, Fla. The bill also authorizes and directs the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mr. Ashley an amount equal to the aggregate of the amounts paid by him or withheld from sums otherwise due him, in complete or partial satisfaction of his liability to the United States which was set forth above. In addition, the bill also provides that in the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved as a result of this bill.

Prior to January 7, 1957, Mr. Ashley held the upgraded position of shop personnel supervisor and received as compensation the sum of \$6,489.60 per annum. On January 27, 1957, Mr. Ashley's position was brought under the Classification Act and it was changed to personnel assistant, carrying a GS-6 grade. His pay, however, was set in accordance with Federal Employees Pay Regulation 25.103(d) which authorized a saved pay rate and he continued to draw \$6,489.60 per annum for his personnel assistant position. On August 3, 1957, the Civil Service Commission, as a result of a decision of the Comptroller General, B-104080 (unpublished) of August 2, 1947, revoked Federal Employees Pay Regulation 25.103(d). The unpublished Comptroller General decision previously mentioned referred to 31 Comp. Gen. 251, 253 (1955) which stated that with regard to Federal Employees Pay Regulations 25.401 through 25.408 pertaining to salary retention in demotion actions, "we will be required to withhold credit for any payment of compensation hereafter made under said sections." A similar statement was not included in the unpublished decision of August 2, 1947, and consequently it was concluded that actions processed prior to the date of the unpublished decision of October 2, 1957 required no change. Mr. Ashley was included within this category and as a result continued to draw pay at a saved pay rate. The Department's instructions issued on January 13, 1958 (Office of Industrial Relations Notice 12195) were based on the above interpretation. That notice provided that if an employee's rate of pay had been saved on the basis of Federal Employees Pay Regulation 25.103(d) effective on or after August 3, 1957, it would be necessary

to correct his rate of pay to the maximum scheduled step of the grade in which his position was placed, retroactively to the effective date of the original action. Under this interpretation, no corrective action was required for those employees, in Mrs. Ashley's category, whose pay had been saved prior to August 3, 1957.

As is obvious from the facts outlined above, Mr. Ashley's salary was computed on the basis of the saved rate in accordance with instructions issued by the Navy Department. Further, these instructions were based upon civil service regulations.

This committee has considered all of the aspects of this matter and has concluded that this case presents a clear-cut basis for relief. Further, the committee has been advised that Mr. Ashley is over 60 years of age and this liability places a heavy burden upon him presently and presents a problem concerning his retirement plans. Accordingly it is recommended that the bill be considered favorably, as amended.

Attached hereto and made a part hereof are the reports submitted by the Comptroller General of the United States, and the Department of the Navy on this bill and prior bills in previous Congresses.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 20, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: We refer to your letter of May 13, 1969, requesting our views on H.R. 11060, 91st Congress, first session.

The bill would relieve Mr. Victor L. Ashley of erroneous payments of pay in the amount of \$2,717.76 for the period January 27, 1957, through October 1, 1961, while an employee of the Department of the Navy, Green Cove Springs, Fla.

While Public Law 90-616 amended title 5, United States Code, to authorize the waiver of claims of the Government resulting from the receipt of erroneous payments of pay, that law expressly restricts the waiver authority to erroneous payments occurring on or after July 1, 1960. By letter of January 8, 1969, B-148337, we advised you that under authority conferred by Public Law 90-616 our Office had waived that part of the claim of the United States against Mr. Ashley which was incurred on and after July 1, 1960. We also advised you that there would appear to be need for relief legislation for overpayments of salary in the amount of \$2,717.76 for the period January 27, 1957, through June 30, 1960.

If the bill is to receive favorable consideration we suggest that the period of overpayment on line 6 of page 1 should be restated to show the period as "through June 30, 1960."

The propriety of enactment of H.R. 11060, 91st Congress, first session, however, involves a matter of policy for determination by the Congress.

Sincerely yours,

R. F. KELLER

(For the Comptroller General of the United States).

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., January 11, 1963.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of October 16, 1962, to the Secretary of the Navy requesting comment on H.R. 13209, a bill for the relief of Victor L. Ashley.

This bill would relieve Victor L. Ashley of Green Cove Springs, Fla., of liability to the United States in the amount of \$6,848.44. This amount represents an overpayment of compensation to Mr. Ashley from January 27, 1957, through October 2, 1961. The compensation in question was received by him while he was employed with the Florida group, Atlantic Reserve Fleet, Green Cove Springs, Fla. The bill also authorizes and directs the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Mr. Ashley an amount equal to the aggregate of the amounts paid by him or withheld from sums otherwise due him, in complete or partial satisfaction of his liability to the United States which was set forth above. In addition, the bill also provides that in the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved as a result of this bill.

Prior to January 7, 1957, Mr. Ashley held the ungraded position of shop personnel supervisor and received as compensation the sum of \$6,489.60 per annum. On January 27, 1957, Mr. Ashley's position was brought under the Classification Act and it was changed to personnel assistant, carrying a GS-6 grade. His pay, however, was set in accordance with Federal Employees Pay Regulation 25.103(d) which authorized a saved pay rate and he continued to draw \$6,489.60 per annum for his personnel assistant position. On August 3, 1957, the Civil Service Commission, as a result of a decision of the Comptroller General, B-104080 (unpublished) of August 2, 1957, revoked Federal Employees Pay Regulation 25.103(d). The unpublished Comptroller General decision previously mentioned referred to 31 Comp. Gen. 251,253 (1955) which stated that with regard to Federal Employees Pay Regulations 25.401 through 25.408 pertaining to salary retention in demotion actions, "we will be required to withhold credit for any payment of compensation hereafter made under said sections." A similar statement was not included in the unpublished decision of August 2, 1957, and consequently it was concluded that actions processed prior to the date of the unpublished decision of October 2, 1957, required no change. Mr. Ashley was included within this category and as a result continued to draw pay at a saved pay rate. The Department's instructions issued on January 13, 1958 (Office of Industrial Relations Notice 12195), were based on the above interpretation. That notice provided that if an employee's rate of pay had been saved on the basis of Federal Employees Pay Regulation 25.103(d) effective on or after August 3, 1957, it would be necessary to correct his rate of pay to the maximum scheduled step of the grade in which his position was placed, retroactively to the effective date of the origi-

nal action. Under this interpretation, no corrective action was required for those employees, in Mr. Ashley's category, whose pay had been saved prior to August 3, 1957.

Subsequently, under date of May 3, 1962, the Atlanta regional office of the General Accounting Office issued an informal inquiry in the case of another civilian employee, in which it was stated: "We recognize that NCPI 195.3-7a(4) was changed effective August 3, 1957, however, this change does not relieve the necessity to adjust the salary rate which was established prior to that date at a rate that was in excess of the maximum scheduled rate of GS-8." As a result of the Atlanta regional office inquiry, an informal check was made which indicated that there were possibly as many as 40 other employees, including Mr. Ashley, who had received a saved pay rate under the revoked regulation.

As can be seen, the granting of the saved pay rate to Mr. Ashley was based on instructions issued in good faith by the Navy Department and such instructions were, in fact, based on civil service regulations. As previously indicated, there are approximately 40 other employees who will be effected by the Comptroller General's decision which requires collection in circumstances similar to Mr. Ashley's. In view of the above circumstances, the Department of the Navy is presently coordinating with the Department of the Army and the Department of the Air Force a formal request to the Comptroller General to forgive collection action against the employees whose cases fall into the category of the cases previously discussed.

The Department of the Navy recognizes that to accord Mr. Ashley relief envisioned by H.R. 13209 of the 87th Congress would be according him preferential treatment over the other civilian personnel similarly situated. This Department does recognize, however, that Mr. Ashley received the overpayment in question in good faith and through no fault of his own. Accordingly, in view of all of the circumstances previously mentioned, the Department of the Navy will interpose no objection to the enactment of H.R. 13209 of the 87th Congress.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report on H.R. 13209 for the consideration of the committee.

Sincerely yours,

C. R. KEAR, Jr.,
Captain, U.S. Navy, Deputy Chief
 (For the Secretary of the Navy).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, October 25, 1962.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of October 16, 1962, acknowledged October 17, requests our report upon H.R. 13209 for the relief of Mr. Victor L. Ashley.

The bill would relieve Mr. Ashley of liability to the United States for overpayments of compensation received during the period January 27, 1957, through October 2, 1961, while employed with the Florida

group, Atlantic Reserve Fleet, Green Cove Springs, Fla. It also would relieve any accountable officer from liability arising out of the overpayments for which relief would be granted under the bill, and finally it would direct the Secretary of the Treasury to pay to Mr. Ashley an amount equal to the aggregate amount that may have been paid by Mr. Ashley or withheld from moneys otherwise due him in complete or partial satisfaction of his liability on account of which relief would be granted under the bill.

The pertinent facts as disclosed by our records are as follows:

Effective January 27, 1957, the beneficiary named in the bill was transferred from an ungraded position—shop personnel supervisor, \$6,489.60 per annum—to a position under the Classification Act—personnel assistant, GS-201-6. Upon transfer, Mr. Ashley's ungraded rate of compensation (\$6,489.60) was saved to him because it was higher than the maximum scheduled rate in the GS position to which he transferred. This action was in accordance with the regulations of the Civil Service Commission—section 25.103(d)(4) appearing in Z1-319, Federal Personnel Manual in effect immediately prior to August 3, 1957.

In our decision in 35 Comp. Gen. 251, we held that it was beyond the scope of the authority of the Civil Service Commission to provide by regulation for the saving of a salary rate above the maximum scheduled rate of the grade to which a position has been reduced upon reclassification from a higher grade. Legislation was enacted in 1956 to permit saved pay in such cases subject to specified conditions (5 U.S.C. 1107). Similarly, in our decision of August 2, 1957, B-104080, we held that the Commission's regulation could not save compensation greater than the maximum scheduled rate of the Classification Act grade in which an employee is placed following the conversion of his ungraded position to a position under the Classification Act of 1949, as amended. A copy of that decision is enclosed. Thus, recovery had to be made in cases where employees received saved compensation in excess of the maximum scheduled rate of their grade after the date of that decision—August 1, 1957. Effective August 3, 1957, section 25.103(d)(4) of the regulations of the Civil Service Commission was amended to conform with our decision of August 2. Section 604(b) of the act of October 11, 1962, Public Law 87-793, authorizes the Civil Service Commission to issue regulations covering saved pay in such cases. The legislation, however, is not retroactive.

We know of no special circumstances warranting enactment of preferential legislation in the case of Mr. Ashley. Our files indicate that an informal check by the Office of Industrial Relations of the Department of the Navy disclosed that there are many employees at various naval activities who may have received erroneous grants of salary retention on the basis similar to Mr. Ashley. We assume that you have requested a report from the Department of the Navy relative to this matter. That Department may be in a position to advise you more specifically concerning the number of cases in which overpayments were made under circumstances similar those present in Mr. Ashley's case.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 2, 1957.

HON. HARRIS ELLSWORTH,
Chairman, U.S. Civil Service Commission.

DEAR MR. ELLSWORTH: Your letter of June 21, 1957, requests our decision whether section 25.103(d)(4) of the Federal Employees Pay Regulations, 5 CFR 25.103(d)(4), operates to save the existing rate of basic compensation when the Civil Service Commission finds for the first time that certain positions which the employing agency has treated as wage board positions should be classified under the Classification Act of 1949, 63 Stat. 954.

The particular situation giving rise to your question is recited in your letter as follows:

The positions involved are known as plastic scribes. A number of departments have placed these positions under the wage board system, while others have considered similar positions to be appropriately under the Classification Act. Because of the difference of opinion among the several agencies as to the system under which these positions should be placed for wage purposes, we undertook a study to resolve the issue. On the basis of our findings it was concluded that the position of plastic scribe or negative engraver (color separation) belongs under the Classification Act. All departments concerned were notified of the decision and those having them at present under the wage board system were requested to take steps to place them under the Classification Act.

You say that because of protests from agencies and individuals concerned you have granted a delay of 90 days before requiring any action regarding the positions.

Section 203 of the Classification Act of 1949, 63 Stat. 956, authorizes and directs the Civil Service Commission to determine finally the applicability of sections 201 and 202 of the act to specific positions, officers, and employees. The coverage provisions of section 202(b) have the effect of applying the act to the positions in question unless they are subject to an exception under section 202. You say that in the present instance the Commission's determination, if it is not reversed, would be that subsection (7) of section 202, exempting wage board positions, does not apply to the specific positions in question.

The material question here is whether the cited provisions of the pay regulations may be applied to save a previous rate of basic compensation which is **above the maximum** scheduled rate of the grade in which the positions are allocated. The regulations provide for the saving of the rate above such maximum where an employee occupies a position not subject to the Classification Act, and the employee together with his position is initially brought under the Classification Act of 1949, as amended, pursuant to a reorganization act or other legislation, an Executive order of the President, or a decision of the Commission under section 203 of the 1949 act.

You say that your doubt in the present matter arises from our decision of October 31, 1955, 35 Comp. Gen. 251. That decision held in effect, that it was beyond the scope of the authority of the Civil Serv-

ice Commission under the Classification Act of 1949 to provide by regulation for the savings of a rate above the maximum scheduled rate of the grade to which the position had been reduced upon reclassification from a higher grade.

For the reasons set forth in our decision of October 31, 1955, we hold that section 25.103(d) (4) of the Commission's regulations does not operate to save the existing rate of basic compensation of the employees.

The question submitted is answered accordingly.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

